

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ARTHUR TAYLOR,

Plaintiff,

v.

GORDAN, et al.,

Defendants.

No. 2:24-cv-0403 CKD P

ORDER AND

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. § 1983. On September 19, 2024, plaintiff's complaint was dismissed with leave to file an amended complaint. Plaintiff has filed an amended complaint.

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

Plaintiff complains about events occurring at the California Medical Facility including a single instance of his outgoing legal mail being opened, being threatened with prisoner disciplinary proceedings and, following a search, food being confiscated and thrown on the ground. Plaintiff makes other allegations that are either vague or incomprehensible.

Nothing in plaintiff's complaint amounts to a claim upon which plaintiff can proceed. The Eighth Amendment affords plaintiff the right not to be subjected to cruel and unusual punishment, but nothing he alleges approaches a violation of the Eighth Amendment. The Constitution "does not mandate comfortable prisons." Rhodes v. Chapman, 452 U.S. 337, 349 (1981). De minimus harm, such as that described by plaintiff, is not protected under the Constitution. McKune v. Lile, 536 U.S. 24, 41 (2002).

For these reasons, plaintiff's amended complaint fails to state a claim upon which plaintiff can proceed. The court has already given plaintiff an attempt to cure the defects in his pleadings and plaintiff has not been able to do so. Granting a second attempt appears futile.

In accordance with the above, IT IS HEREBY ORDERED that the Clerk of the Court assign a district court judge to this case.

IT IS HEREBY RECOMMENDED that:

1. Plaintiff's amended complaint be dismissed; and
2. This case be closed.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, plaintiff may file written objections with the court. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections within the specified time waives the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: February 24, 2025


CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE